

THE NEW B.C. BUSINESS CORPORATIONS ACT - IMPORTANT CHANGES FOR DIRECTORS AND OFFICERS

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The new *B.C. Business Corporations Act* (the “BCBCA”) is presently scheduled to come into force in late March, 2004. The introduction of the BCBCA brings considerable changes affecting British Columbia companies, including relating to the duties and responsibilities of directors and officers.

Under the old *Company Act*, a B.C. company was required to have at least one director who was a B.C. resident and the majority of directors had to be Canadian residents. Under the BCBCA there will be no residency requirements at all.

Under the old Act, a B.C. company was required to have a president and a secretary. As well, the president was required to be a director of the company. In the BCBCA, these requirements will also be eliminated.

In removing a director, under the old Act a director could only be removed by a special resolution by a three quarters vote of the company’s shareholders. In the BCBCA, a special resolution can be utilized, however the articles of a company can also specify other methods such as an ordinary resolution of the shareholders or even a directors resolution to remove a director.

Under the BCBCA, in exercising powers or discharging responsibilities as a director or officer of a company, an individual must act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

In terms of personal liability of directors, under the old Act defences were based on good faith reliance. The BCBCA in some respects broadens defences available to directors to allow reliance on general statements of fact made by officers of the company or on other information which provide reasonable grounds to support the actions of a director.

However, the BCBCA also prescribes various situations in which personal liability can extend to directors and officers of a company, including:

- a. paying unreasonable commissions on share purchases;
- b. paying a dividend when the company is or will become insolvent;
- c. granting or paying an inappropriate indemnity;
- d. knowingly failing to properly display the name of the company;
- e. failing to properly or adequately disclose a discloseable interest in a contract or transaction.

The BCBCA is a long overdue modernization of corporate law in British Columbia. For those who serve as directors and officers however its introduction will impose new responsibilities and potentially greater risk and liability.